

March 10<sup>th</sup>, 2006

Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, SW  
Room TW-A325  
Washington, DC 20554

**Request for Review of a decision made by USAC – CC Docket Nos. 96-45 and 02-6**

**Decision being appealed:** Administrator's Decision Letter dated January 12, 2006  
(Attachment 1)

**Form 471 Number:** 413486

**FRN:** 1148037

**Funding Year:** 2004 (7/1/2004 – 6/30/2005)

**Billed Entity Number:** 139223

**SPIN:** 143024477

**Service Provider Name:** Systems Engineering and Management

**Applicant:** Orleans Parish School District  
1111 Milan Street  
New Orleans, LA 70115

**Appellant's Contact Person:** George McDonald  
Phone: 703-836-2450  
E-Mail: [gmcdonald@e-ratecentral.com](mailto:gmcdonald@e-ratecentral.com)

I am writing to request review by the FCC's Wireline Competition Bureau of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) to uphold, on appeal, SLD's decision, announced in a Funding Commitment Decision Letter (FCDL) dated December 3, 2004, to deny the FRN cited above because "30% or more of this FRN includes a request for KidBiz 3000 which is an ineligible product based on program rules."

SLD has denied a number of other requests for discounts on our products KidBiz3000 and Email 3000 (discussed below). These denials are affecting our ability to compete in the marketplace, and therefore we are a party aggrieved by

these decisions and are filing this appeal with respect to the denial of New Orleans' request.

There is an appeal pending at the FCC with respect to a denial of funding for Email 3000 for the District of Columbia Public Schools, also for Funding Year 2004. (Attachment 2) That appeal was filed on November 28, 2005, by Garnet Person, CEO of E-Rate Elite Services, Inc. It referenced Billed Entity Number 126340, Form 471 Number 393704, and FRN 1199658. We ask that you join these two appeals and give them expedited treatment given the serious impact these decisions are having on our small business. There is another appeal pending at the SLD with respect to a denial for the East Orange School District in New Jersey. If that appeal is denied, we will file an appeal with you to join that decision with these two.

### **The Service**

Achieve3000 publishes a student e-mail system, Email3000. This service provides e-mail accounts that may be secured for use in schools. Email3000 includes e-mail tools only. KidBiz3000 is a reading program, also published by Achieve3000, which includes the student e-mail software. New Orleans Public Schools intended to purchase the entire KidBiz3000 service, but understood that only the e-mail portion of it is E-rate eligible and requested E-rate funds for only that portion.

### **The SLD Decision**

In the Administrator's Decision Letter, SLD explained:

The documentation submitted to SLD by Archive3000 [sic] to determine e-rate eligibility of these services indicates that KidBiz3000 e-mail portion is for access to a secure e-mail account that can be used to exchange messages only with other KidBiz3000 account holder. SLD's [sic] has determined that KidBiz3000 e-mail functionality is not eligible for discounts. E-mail accounts that are limited only to a small portion of the Internet e-mail community does [sic] not fit within the FCC's eligibility requirements for Internet access.

### **Our Position**

It is correct that Email3000 can be configured so that students can exchange e-mail only with other users within the educational community, and it precisely that capability that makes it an attractive to school administrators. We have been very surprised by SLD's decisions with respect to this product. In an environment of heightened concern regarding our children's Internet exposure, many school districts rightly believe that it is important to protect students from spam and other unwanted and potentially dangerous e-mails. By limiting access, Email3000 can

help assure that fully functional e-mail services can be provided to meet the educational objectives for students and staff without putting students at risk.

We note that the Universal Service Order<sup>1</sup> was very simple on the point of e-mail eligibility:

We conclude that eligible schools and libraries will be permitted to apply their relevant discounts to information services provided by entities that consist of:

. . . . (iii) electronic mail services [e-mail].

The October 10, 2003, Eligible Services List (applicable for Funding Year 2004) was also very simple and direct on the issue of eligibility of e-mail:

E-Mail Service, which provides for the transmission of simple text messages and other embedded data, is eligible for discount.

and

Eligible software consists only of operating system software for shared systems and multi-user e-mail or voice mail software.

SLD appears to have established a new condition on eligibility of e-mail systems with no prior notice to applicants and with no foundation in FCC rules. Email3000 is “multi-user e-mail . . . software.” This product is within the scope of the Universal Service Order and the description of eligible software in the Eligible Services List. Limited-access e-mail serves a true educational purpose. Not only does it provide a robust communications medium between students and staff, but it does so in a way that both protects the students and assures that e-mail is used in an educationally appropriate way. We are attaching three letters from school districts who use Email3000 attesting to the importance of e-mail and the importance of its security. (Attachments 3, 4, and 5) As you will see from reading these letters, if “limited” e-mail is ineligible for E-rate discounts, schools, especially the poorer ones, may be forced to forego e-mail and its important educational value.

We also believe that SLD is funding similar products from a number of other service providers. We searched on the Internet for “safe student e-mail” and identified five companies offering e-mail services that can be configured to limit those with whom students can exchange e-mails. (We suspect there are many more companies, but we did not do an exhaustive search.) The companies we found advertise that their services are E-rate eligible. We then checked for the commitments these companies have received in Funding Year 2005 and found they total \$5.3 million so far and cover school districts across the country. Some of that funding may be for products other than e-mail, but it is clear that SLD is funding (appropriately, in our view) “limited” e-mail services from a number of service providers for many school

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<sup>1</sup> Federal-State Joint Board on Universal Service (FCC 97-157), May 8, 1997, para. 444.

districts. We make this point not to bring trouble to our competitors, but to help the Commission understand how widely used “limited” e-mail services are. As you can see from the letters we have attached, the ability to limit is important to school officials. Service providers are meeting that need, and SLD’s general practice of providing discounts for such services is consistent with E-rate rules.

We ask the Wireline Competition Bureau to reverse the SLD’s determination about the eligibility of Email3000 and remand the funding request to SLD for funding.

If you conclude that there is merit in SLD’s position that “limited” e-mail services may be ineligible, we urge you to make your ruling prospective since no notice had been given about this restriction, which appears at odds with prior guidance from the FCC and USAC. Achieve3000 (like the competitors we identified in our Internet search) has been marketing its products to E-rate applicants confident that Email3000 was eligible under program rules. If any limits on the users with whom e-mail may be exchanged render a product ineligible, we would have and will market our products with that proviso and school districts may choose whether to limit use and forego E-rate discounts or not limit it and apply for discounts. And we would urge the Commission to direct USAC to ensure that other service providers do the same.

Sincerely,



Saki Dodelson  
CEO, Achieve3000  
saki.dodelson@achieve3000.com  
phone: 732-367-5505, ext. 107  
fax: 732-367-2313  
mobile: 732-814-5671

## Attachment 1



**Universal Service Administrative Company**  
Schools & Libraries Division

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**Administrator's Decision on Appeal – Funding Year 2004-2005**

January 12, 2006

George McDonald  
E-Rate Central  
202 East Alexandria Avenue  
Alexandria, VA 22301

Re: Applicant Name: ORLEANS PARISH SCHOOL DISTRICT  
Billed Entity Number: 139223  
Form 471 Application Number: 413486  
Funding Request Number(s): 1148037  
Your Correspondence Dated: January 24, 2005

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of SLD's Funding Year 2004 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1148037  
Decision on Appeal: **Denied**  
Explanation:

- On appeal, you seek reversal of SLD's decision dated December 3, 2004. You state that this request is for a purchase of e-mail accounts for 68,000 students. In support of your appeal, you enclose the Item 21 attachments for Funding Year 2003 and 2004. You further state that you requested and were approved for this type of products in a previous funding year. Additionally, Archive3000 publishes a student e-mail system, Email3000, which provides secure e-mail accounts for use in schools. Email3000 includes e-mail tools only. KidBiz3000 is a reading program, also published by Archive3000, which includes the student e-mail software. You recognize that only the e-mail portion of KidBiz3000 is E-rate eligible. You close your appeal by stating that that the dollar amount requested was the result of a data entry error, and state that since the vendor is offering the

parish a discounted price, you would like to correct the requested amount to \$340,000.00 and resubmit the Form 471.

- After a thorough review of the appeal, Item 21 support documentation and documentation from Archive3000, it was determined that this funding request contained ineligible use of services. The documentation submitted to SLD by Archive3000 to determine e-rate eligibility of these services indicates that KidBiz3000 e-mail portion is for access to a secure-email account that can be used to exchange messages only with other KidBiz3000 account holders. SLD's has determined that KidBiz3000 e-mail functionality is not eligible for discounts. E-mail accounts that are limited only to a small portion of the Internet e-mail community does not fit within the FCC's eligibility requirements for Internet access.
- Your Form 471 application included costs for the following ineligible services: KidBiz 3000 e-mail. FCC rules provide that discounts may be approved only for eligible services. 47 C.F.R. §§ 54.502, 54.503. The USAC web site contains a list of eligible services. See the web site, [www.sl.universalservice.org](http://www.sl.universalservice.org), Eligible Services List. FCC rules require that if 30% or more of an applicant's funding request includes ineligible services, the funding request must be denied. 47 C.F.R. § 54.504(c)(1). 100% of your funding request was for ineligible services. Therefore, your funding request was denied. You did not demonstrate in your appeal that your request included less than 30% for ineligible services. Consequently, SLD denies your appeal.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either the SLD or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division  
Universal Service Administrative Company

Attachment #2

***E-Rate Elite Services, Inc.***

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**Funding Technology Made Easier**

***Garnet E. Person***

Chief Executive Officer

P.O. Box 563  
Owings Mills, MD 21117

(410) 902-5800  
Toll Free: (866) 372-8337

November 28, 2005

Fax: (410) 581-1209

[www.erateelite.com](http://www.erateelite.com)

Request for Review  
Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: Request for Review – District of Columbia Public Schools  
Application No. 393704 (Form 471, Funding Year 2004)  
Billed Entity No. 126340  
Funding Request No. 1199658  
CC Docket No. 02-6

Federal Communications Commission Officer:

This Request for Review addresses the Schools and Libraries Division's (SLD) decision to deny an appeal regarding funding for Funding Request No. (FRN 1199658) requested on the above-referenced FCC Form 471 (Application No. 393704) submitted by E-Rate Elite Services, Inc. ("E-Rate Elite") on behalf of the District of Columbia Public Schools ("DCPS").<sup>2</sup> The June 21, 2005 Funding Commitment Decision Letter (FCDL) denied the aforementioned FRN and provides the following explanation: "30% or more of this FRN includes a request for

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<sup>2</sup> Administrative Decision on Appeal Letter, Universal Service Administrative Company, to Garnet Person, E-Rate Elite Services, Inc., dated October 21, 2005.

KidBiz3000 which is an ineligible service based on program rules.”<sup>3</sup> Conversely, the Administrator’s Decision on Appeal denies funding based on the assertion that “E-mail3000” is an ineligible service.

As set forth in greater detail below, E-Rate Elite provided documentation to support the aforementioned request. E-Rate Elite believes that documentation to be consistent with SLD standards for the determination of eligibility. We also believe the services requested on FRN 1199658 are eligible for funding based on the Eligible Services List.

1. SLD Concurs with E-Rate Elite’s Assertion that the Request was for E-Mail3000

E-Rate Elite contended in our August 20, 2005 filing that the services requested on the aforementioned FRN were for E-mail3000 and not KidBiz3000, which was the basis for the original denial in the June 21, 2005 FCDL. E-Rate Elite asserted, “On October 13, 2004, after remaining in constant contact with Mr. Christie as to our progress in obtaining the requested information, E-Rate Elite provided an e-mail response, which addressed several outstanding issues, inclusive of FRN 1199658. The information specific to that FRN was included in the e-mail as a file attachment entitled “Email3000 DCPS 011604.doc”.<sup>4</sup> This document was cross-referenced within the file attachment “SLD Response 393704.doc”, which served as an explanatory document for all other file attachments.”<sup>5</sup>

Based on the representations contained within the Administrator’s Decision on Appeal letter, we believe it reasonable to assert that SLD concurred that the incorrect service was used to evaluate the original decision rendered on the FCDL.

2. Services Requested are Compliant with the SLD Eligible Services List.

The services requested on FRN 1199658 were for student and teacher e-mail accounts through KidBiz3000, also known as Achieve3000. The Eligible Services

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<sup>3</sup> Funding Commitment Decision Letter from Schools and Libraries Division, Universal Service Administrative Company, to DCPS, c/o Garnet Person, dated June 21, 2005.

<sup>4</sup> See Exhibit A, Achieve3000 DCPS Proposal, dated January 16, 2004.

<sup>5</sup> See Exhibit B, Letter to Mr. John Christie (SLD), dated October 6, 2004.

List governing requests for Funding Year 2004 lists E-mail Account Fees and E-mail Service as eligible items.

The E-mail3000 solution requested is an Internet based E-mail service. SLD asserts in their appeal decision, "However, e-mail accounts that are limited only to a small portion of Internet e-mail community does not fit within the FCC's eligibility requirements for Internet Access."<sup>6</sup> We believe this assertion to be inconsistent with the information provided within the Eligible Services List.

Services provided by E-mail3000 are in fact "e-mail accounts." The size of the Internet population which students and teachers may access via a given e-mail account/service is not qualified within the Eligible Services List. SLD makes reference in their decision to a "small portion of the Internet e-mail community," however provides no reference to a standard or minimum access requirement as to how many Internet e-mail users must be accessible for this service to be eligible.

E-Rate Elite questions the SLD's assertion that limiting accessibility to the Internet community would render this e-mail service and account ineligible. Especially, given the requirement to certify compliance with the Children's Internet Protection Act for receipt of E-Rate funding. The Children's Internet Protection Act specifically mandates limitations be established relative to students' accessibility to the Internet community.

#### 4. Conclusion

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The attached documentation clearly proves: (1) the applicant properly documented the funding request (2) Clearly the Eligible Services List provides for the eligibility of e-mail accounts and service. SLD's assertion that there is some established threshold for the portion of the Internet community that applicant's e-mail services are capable of accessing is unsupported and inconsistent with the required compliance with the Children's Internet Protection Act. DCPS has selected this service as the most cost effective solution for student and teacher e-mail accounts. Based on the foregoing, we respectfully request the FCC grant this Request for Review and remand this application to the SLD for further consideration under the established policies and procedures for evaluating applications in Funding Year 2004.

Sincerely,

Garnet E. Person

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<sup>6</sup> See Administrator's Decision on Appeal Letter, dated October 21, 2005.

CEO, E-Rate Elite Services, Inc.

Enclosures: Exhibits A-B

Attachments 3, 4, 5



# Vineland Public Schools

625 PLUM STREET • VINELAND, NJ 08360-3708 • (856) 794-6700 • FAX (856) 507-4325

March 8, 2006

To Whom It May Concern:

This letter is with regards to Achieve3000's student e-mail programs. *Vineland Public Schools* uses Achieve3000's e-mail programs, and we have found them to be educationally sound and beneficial for our students and teachers in many aspects.

Providing students with e-mail accounts is fraught with risk. There is a danger of students becoming engaged in harmful relationships with unsafe individuals and criminals, and a danger of students accessing inappropriate or pornographic content. These are tremendous liabilities for school districts, whose chief responsibility is to ensure students' safety at all times. At all times, the district should err on the side of caution in these matters.

At the same time, we at *Vineland Public Schools* recognize the educational benefits of e-mail. E-mail is a pervasive communication tool, and our students need to be prepared to use it, and to use it appropriately. Research supports e-mail as an academic tool, as well. It promotes literacy and helps students engage in meaningful dialogue with each other - and with their teachers. It supports student collaboration and project-based learning.

Because Achieve3000's e-mail was configured so students could e-mail only within the *Vineland Public School* community, we were able to implement student e-mail without any concerns for student safety. Our students are unable to exchange e-mail with anyone outside of the community of permitted users.

This is the fourth year that our students are using Achieve3000's programs, and our schools have implemented them into their classroom and computer lab curriculum in a very effective manner.

I believe that the "closed" configuration is critical for student e-mail, and I hope you will take our experiences into consideration as you review this case.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen L. Dantine".

Stephen L. Dantine

Director of Technology  
Vineland Public Schools



**OFFICE OF THE SUPERINTENDENT  
LONG BRANCH PUBLIC SCHOOLS  
540 BROADWAY, LONG BRANCH, NEW JERSEY 07740**

JOSEPH M. FERRAINA  
SUPERINTENDENT OF SCHOOLS  
(732) 571-2868, EXT. 2386  
FAX: (732) 229-0797

March 7, 2006

To Whom It May Concern:

I am writing in reference to the review that the FCC is conducting of Achieve3000's student e-mail solutions. Our school district has been working with Achieve3000 for several years and I hope that you will take our positive experiences with their solutions into consideration.

We believe that student e-mail can have immense academic benefits. It is a tool which can help student writing, as well as provide them with essential "techno-literacy" skills. Long Branch School District installed Achieve3000's e-mail almost three years ago to provide students with increased opportunities for informal writing, and with a vehicle for collaborating with peers and teachers around curricular content.

Achieve3000's e-mail programs can be configured to allow students to e-mail only within the district community. **This was one of the most important factors in our decision to implement Achieve3000.** Student safety and privacy are of tantamount importance to us and we would not have considered an "unprotected" e-mail which could pose risks of inappropriate content being sent to students, and of potentially harmful and dangerous relationships with people outside of our school system.

Achieve3000's programs can be configured so students are unable to exchange e-mail with anyone outside of the school / district community. Their e-mail has built-in filtering capabilities which are critical to ensuring instructionally appropriate use. District and school administrators – as well as teachers – have granular control over students' e-mail permissions.

All of these factors are absolutely critical for student e-mail.

We have had wonderful experiences with Achieve3000 and with their e-mail solutions. Thank you for your consideration of their case.

Very truly yours,

Joseph M. Ferraina  
Superintendent of Schools

JMF/trm



**DISTRICT OF COLUMBIA  
PUBLIC SCHOOLS**

*Office of Academic Services  
Differentiated Learning Division  
Extended Education Programs  
825 North Capitol Street, NE, Eighth Floor  
Washington, D.C. 20002  
(202) 442-5574 • FAX (202) 442-5310*

March 7, 2006

To Whom It May Concern:

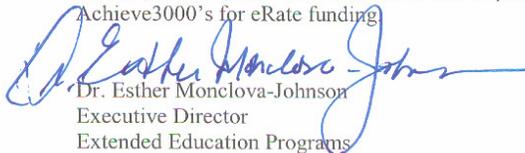
I am writing in reference to Achieve3000, publisher of KidBiz, TeenBiz, and Email3000. Their software has been installed in the District of Columbia Public Schools (DCPS) since 2001, and we have been extremely satisfied with the security that their email system ensures for our students.

Providing students with e-mail accounts was a big step for our school district. We believe that e-mail can significantly improve the education of our students by providing regular writing opportunities, an easy means for students and teachers to engage in a dialogue with subject matter experts outside the DC Public School community, and a means of updating the school community on schedule changes and upcoming events. However, student safety and privacy are of utmost importance, and while recognizing that e-mail has tremendous educational benefits, it was also critical to us that it not compromise student security.

**Achieve3000's unique technology has enabled us to implement student e-mail without compromising student safety.** The inherent security of their application – the fact that we can configure the software to make it impossible for students to e-mail outside of the “authorized community” – was critical to our implementation. Particularly for our middle and high school students, the risks of “open e-mail” systems, where students can e-mail to external domains, would have been prohibitive to implementation. We must protect our students from pornographic or other inappropriate e-mail, which is pervasive in unprotected systems and from the possibility that they will connect with individuals who might try to lure them into dangerous situations outside of school.

After more than four years of doing business with Achieve3000, and seeing the benefits that their solutions have had for our students, DCPS is delighted to have implemented their programs. Student writing has improved, and our children are learning the e-communication skills necessary for success in the 21<sup>st</sup> century.

Thank you for your consideration of our experiences in considering the eligibility of Achieve3000's for eRate funding.

  
Dr. Esther Monclova-Johnson  
Executive Director  
Extended Education Programs

